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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,875	01/21/2002	Bernhard B. Sterling	OPTIS.039A	9479
20995	7590	11/05/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			PUNNOOSE, ROY M	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			2877	

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Allowability
SUPPLEMENTAL

Application No.

10/055,875

Examiner

Roy M. Punnoose

Applicant(s)

STERLING ET AL.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment received on 10/04/2004.
2. ☒ The allowed claim(s) is/are 95-113.
3. ☒ The drawings filed on 20 February 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 10/28/04.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


GREGORY J. TOATLEY, JR.
PRIMARY EXAMINER

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed on October 04, 2004 is acknowledged, but were NOT entered into the records because it was not in compliance with 37 CFR § 1.121 (c) 3, which requires that the text of "withdrawn" claims be included in said amendment.

In the amendments filed on October 04, 2004, claims 1-50, 62-82, and 89-94 were cancelled. Claims 51-61 and 83-88 were withdrawn, but the text of the withdrawn claims was not included in the amendment. Claims 95-113 were added.

2. The Office mailed a non-final rejection of claims 1-13,15-19, 21-42, 62-70 and 72-76 on July 01, 2004. The applicant responded with the filing of an amendment on October 04, 2004, which was late by one day to avoid a one-month extension fee. Therefore, the applicant is hereby informed that the Office has charged a one-month extension fee for the above stated reason, and as permitted by the applicant in the letter (see page 2) received on 10/04/2004.

EXAMINER'S AMENDMENT

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Atty. Mark Kurtz (Registration No. 43,711) on October 26, 2004.

The examiner's amendment was done to cancel claims 51-61 and 83-88, which were not in compliance with 37 CFR § 1.121 (c) 3.

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4. The claims have been amended as follows:
 - a. Cancel claims 51-61 and 83-88.

Allowable Subject Matter

5. Claims 95-113 are allowable.
6. Claim 95 is allowable because the prior art of record, taken alone or in combination, fails to disclose or render obvious a method for determining the concentration of an analyte in a patient comprising, transmitting a calibration beam of radiation from the source through the sample element, but not through the sample portion, such that a calibration signal is generated by the optical detection system, in combination with the rest of the limitations of said claim.
7. Claims 96-104 are allowable because they are dependent on independent claim 95.
8. Claim 105 is allowable because the prior art of record, taken alone or in combination, fails to disclose or render obvious an apparatus for determining the concentration of an analyte in a biological fluid sample drawn from a patient comprising, a calibration beam of radiation transmitted from the source through the sample element, but not through the biological fluid sample, and a corresponding calibration signal generated by the optical detection system, in combination with the rest of the limitations of said claim.
9. Claims 106-113 are allowable because they are dependent on independent claim 105.
10. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Conclusion

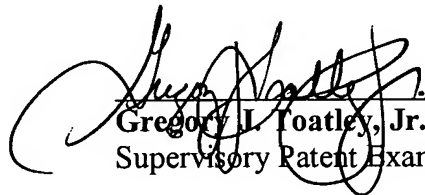
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**.

The examiner can normally be reached on 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gregory J. Toatley, Jr.** can be reached on **571-272-2800 ext.77**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Roy M. Punnoose
Patent Examiner
Art Unit 2877
October 26, 2004


Gregory J. Toatley, Jr.
Supervisory Patent Examiner **AU 2877**